



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of)
)
Romney for President, Inc., *et al.*) MUR 5937

**SUPPLEMENTAL STATEMENT OF REASONS OF VICE CHAIRMAN
MATTHEW S. PETERSEN AND COMMISSIONERS CAROLINE C. HUNTER
AND DONALD F. McGAHN II**

On March 10, 2009, we released a statement of reasons explaining our rationale for voting against the recommendations of the Office of General Counsel (“OGC”) in MUR 5937, which involved an individual (hereafter, “the respondent”) who chartered a plane to fly him, friends, and family members to a Romney fundraising event. Shortly thereafter, Commissioners Bauerly and Weintraub issued a statement expressing their views on the matter. With this Supplemental Statement, we address the issues raised by Commissioners Bauerly and Weintraub and, furthermore, clarify the public record with respect to this matter.

I. Statement of Commissioners Bauerly and Weintraub

The statement of Commissioners Bauerly and Weintraub makes a number of contentions but never addresses either our legal arguments or policy concerns. Instead, it primarily responds to arguments mistakenly attributed to us but which we never made.

Our colleagues contend that the Federal Election Campaign Act of 1971, as amended (“the Act”), prohibits an invited volunteer from organizing and flying other volunteers to a fundraising event, insisting that “the Romney campaign *requested* that Mr. Gardner travel to Boston, sit in a chair on the floor of the TD Banknorth Garden, and spend an entire day making phone calls *on behalf of the campaign.*”¹

A. Requesting Attendance Is Not the Same as Requesting Travel.

Our colleagues first attack a straw-man—our supposed “claim that an ‘invitation’ is *not* a ‘request.’”² They rebut this with the dictionary definition of “invitation” to

¹ MUR 5937, Statement of Reasons of Commissioners Cynthia L. Bauerly and Ellen L. Weintraub, (“Bauerly and Weintraub Statement”) at 5 (emphasis in original).

² *Id.* at 4 n.17 (emphasis in original).

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establish their assertion that “[w]e think it would surprise most recipients of invitations to discover that their presence was not requested.”³ Of course, we do not disagree with our colleagues on this point. But that is because we never made an argument to the contrary in the first place. Rather, we made two points. First, an individual’s travel expenses may be subject to the Act’s limits, prohibitions, and reporting requirements only if a campaign specifically requests or authorizes *the travel*. This reading of the Act is mandated by the Supreme Court, which in *Buckley v. Valeo* held that “only *travel* that is ‘authorized or requested’ by the candidate or his agents would involve incidental expenses chargeable against the volunteer’s contribution limit.”⁴ Thus, it is not enough for a campaign to merely invite an individual to attend an event; instead, the travel must be undertaken “at the *direction of the candidate*” before the travel expenses “may be properly viewed as a contribution.”⁵ Here, the Romney campaign invited the respondent to attend, but there is no evidence that the campaign requested or authorized the respondent to pay travel expenses for the family and friends who attended the event with him. Without such a specific request from the Romney campaign, we could not, consistent with Supreme Court precedent, conclude that the respondent’s travel expenses came within the scope of the Act.

And second, the Commission, in its entire history, has never held that merely receiving an invitation to a campaign fundraising event subjects any resulting travel expenses to the Act’s limits, prohibitions, or reporting requirements. At a time when a single keystroke can instantly send e-mail invitations to thousands (and perhaps millions) of political supporters, if we were to determine (contrary to the instructions of the Supreme Court) that simply receiving an invitation to attend a campaign event could convert an individual’s travel expenses above \$1,000 into contributions, we would be dramatically expanding the number of persons in violation of the Act. We refuse to take that extreme step.

B. “*On Behalf of Means Exactly What it Says.*”

We explained in our original statement that unreimbursed travel expenses made independently of a campaign are not contributions because they are not “on behalf of” the candidate or his campaign committee. Our colleagues do not quarrel with this premise, but they interpret the phrase “on behalf of” differently than we do. In fact, their interpretation of this phrase became the centerpiece of their philippic against departing from the “letter of the law.” In a footnote, they contend (i) that the Act was never limited to travelers “acting as agents” of a campaign, and (ii) that when it amended the Act’s travel exception, Congress did not intend to narrow what “on behalf of” means.⁶ They proceed to state: “We cannot and will not follow the letter of the law only when it is

³ *Id.*

⁴ 424 U.S. 1, 37 n. 43 (internal citations omitted) (emphasis added).

⁵ *Id.* at 37 (emphasis added).

⁶ Bauerly and Weintraub Statement at 5 n.21.

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convenient and reject it when it is not. 'On behalf of the candidate' means exactly what it says."⁷

Again, we agree that the Act only reaches travel expenses incurred "on behalf of" a campaign. Moreover, our colleagues are certainly right that "on behalf of" means exactly what it says. But that only begs the question as to what "on behalf of" actually means. By using "on behalf of" synonymously with "for the benefit of," our colleagues have failed to identify a distinction that, as noted by the American Heritage Collegiate Dictionary, often gets confused. That dictionary offers a helpful primer on idiomatic usage of the word "benefit:"

Traditionally, *in behalf of* and *on behalf of* have distinct senses. *In behalf of* means "for the benefit of," as in *We raised money in behalf of earthquake victims*. *On behalf of* means "as an agent of, on the part of," as in *The guardian signed the contract on behalf of the minor child*. The two senses are often confused even by reputable writers.⁸

Therefore, in this matter, while the respondent's travel expenses may accurately be said to have been *in behalf of* the Romney campaign since the expenses benefited the campaign, the travel expenses at issue cannot be deemed to have been *on behalf of* the Romney campaign because there is no evidence that the campaign specifically requested or authorized the travel. Again, as the *Buckley* Court held, travel must be "at the direction of the candidate" before the related expenses will be considered a contribution.⁹

As our colleagues put it, "nothing in the legislative history of the 1979 amendments suggests that the drafters put the words 'on behalf of' on paper but intended something entirely different."¹⁰ We agree. When enforcing the letter of the law as Commissioners, we must presume that Congress understood the significance of its choice of prepositions.¹¹

⁷ *Id.*

⁸ American Heritage Collegiate Dictionary 123 (3d ed. 1993) (emphasis in original). *Cf.*, Bauerly and Weintraub Statement at 5-6 (*e.g.*, because "Kem Gardner ensured that a substantial portion of the participants did show up and thereby contributed significantly to the success of the campaign" his efforts were "on the campaign's behalf").

⁹ *Buckley*, 424 U.S. at 37.

¹⁰ Bauerly and Weintraub Statement at 5 n.21.

¹¹ We must also presume same with respect to the Commission regulations. For example, these regulations define "Agent" in terms of what a person is authorized to do "on behalf of" the principal. *See* 11 C.F.R. §§ 109.3, 300.2(b).

C. Case Law and Legislative History Support This Position

A couple of other points raised by our colleagues are also worth mentioning briefly. First, while they acknowledge that *Buckley* stands for the principle that the Act reaches “only travel that is ‘authorized or requested’ by the candidate or his agents,”¹² and that the Court was concerned about “the administrative chaos that would be produced if each volunteer and candidate had to keep track of amounts spent on unsolicited travel,”¹³ they never address how the Commission could adopt their interpretation of “on behalf of” without causing the very administrative chaos that the Court requires us to avoid.

Second, our colleagues argue that “[t]he legislative history of the travel exception provides some important context in this matter.”¹⁴ Specifically, they claim that “the 1979 amendments to the Act following *Buckley* reflect the Court’s ‘authorized or requested’ instruction.”¹⁵ However, they do not cite to (nor can we find) any statements in the legislative history that mention *Buckley*. As we noted in our original statement, the 1979 legislative history demonstrates that the amendment of the travel exception was designed to expand the exception to volunteer travel on behalf of political parties as well as to travel by “individuals who are being paid by a candidate or party committee.”¹⁶ Nevertheless, to the extent it intended the 1979 amendments to “reflect the Court’s ‘authorized or requested’ instruction,” Congress’s use of the phrase “on behalf of” only reinforces our argument (as we explained above).

Finally, our colleagues puzzlingly argue that we wish to limit the travel exception to “volunteers.” They state, “Notably, the 1979 amendment removed the term ‘volunteers’ from the exception, however, it appears that our colleagues . . . have chosen to read the term ‘volunteers’ back into this section of the Act.”¹⁷ Nothing could be further from the truth. In fact, as we just showed, the amendments extended the travel exception to cover paid employees of authorized campaigns and political parties.¹⁸ That Congress stripped the word “volunteers” from the exception supports our view that the exception in question only applies to authorized travel undertaken on behalf of – that is “as an agent of, or on the part of” – a campaign.

¹² Bauerly and Weintraub Statement at 3-4 (quoting *Buckley v. Valeo*, 424 U.S. 1, 37 n.43 (1976)).

¹³ *Id.* at 4.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 4.

¹⁶ MUR 5937, Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn II, at 2-3 n. 9 (citing H.R. Doc. No. 96-422, Comm. on House Admin., at 8 (1979)).

¹⁷ Bauerly and Weintraub Statement at 4.

¹⁸ *See supra* note 16.

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II. Public Disclosure

Recently, there has been public interest expressed in seeing OGC's analysis in this and other matters.¹⁹ Although the Commission ultimately rejected OGC's recommendations in this MUR, OGC's analysis did inform our decision. For this reason, and to better supplement the public record and to provide additional context to the areas of disagreement with our colleagues discussed above, we are attaching the General Counsel's Report and Factual and Legal Analysis that OGC provided to the Commission in this matter.

Since joining the Commission, we have had concerns about Commission information being withheld from the public. Disclosure of General Counsel Reports is just one example. Except for two years between 2001 and 2003, from the inception of the Commission through January 2007, the Commission released these reports as a matter of course. Commission practice had been that OGC submitted a First General Counsel's Report ("FGCR") to the Commission containing a recommendation regarding whether or not to find reason to believe ("RTB") that a respondent violated the law. In matters where the Commission voted to find RTB, the respondent was notified of the finding in a Factual and Legal Analysis ("F&LA"), which is based on the FCGR and sets forth the Commission's factual and legal basis for the RTB finding. When the matter was eventually closed, both the FGCR and the F&LA were made public.

Before we were confirmed to the Commission, though, a new practice was adopted under which only the F&LA – and not the FGCR – is placed on the public record after the matter is closed. Moreover, if four Commissioners do not vote to approve OGC's RTB recommendations, then neither the proposed F&LA nor the FGCR is made public. Instead, the Commissioners who voted against finding RTB explain the factual and legal basis for their decision in a statement of reasons that becomes the public basis of the Commission's action. Commissioners that voted to find RTB may also write statements. These are included as part of the public record, even though they do not constitute the reasoning of the Commission.

Furthermore, subsequent General Counsel Reports (*i.e.*, those other than the FCGR) sometimes are made "public" as well. But the versions that are publicly disclosed often have significant portions redacted. This has hampered our ability to fully explain our votes and has made it difficult for the public to follow the actions of the Commission. For example, in MUR 5541 (November Fund), we voted against OGC's recommendations and thus wrote a statement of reasons to explain why. But, on OGC's strong advice, we revised the statement to avoid revealing information that was a basis of

¹⁹ See, e.g., Paul S. Ryan, *Why Is the FEC Withholding Documents From the Public in Violation of Its Own Regulations and Policy Statement?*, Campaign Legal Center Blog (May 29, 2009), available at http://www.clcblog.org/blog_item-287.html. We were not aware that this FOIA request had been denied or was on appeal until we received notice from the Campaign Legal Center.

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our decision which had been redacted from the publicly disclosed Third General Counsel's Report.²⁰

III. Conclusion

For these reasons and to clarify the public record, we submit this statement with the attached FGCR and F&LA.

6/16/09
Date


MATTHEW S. PETERSEN
Vice Chairman

6/16/09
Date


CAROLINE C. HUNTER
Commissioner

6/16/09
Date


DONALD F. MCGAHN II
Commissioner

²⁰ In the Third General Counsel's Report (at 5) for MUR 5541, in an effort to support its recommendation to "[a]ccept the attached conciliation agreement with the November Fund and Bill Sittman, in his official capacity as treasurer," OGC stated that the Commission ought to accept that agreement, *inter alia*:

Because this matter arose from the 2004 election cycle when the political committee status of 527 organizations was still being debated and there was some confusion among the regulated community about the applicable law, there is a certain amount of litigation risk involved in pursuing the November Fund and the Chamber in district court litigation. This risk is particularly enhanced in this case, where the political committee status threshold was reached solely as a result of contributions received in response to solicitations, and not as a result of The November Fund making expenditures. The fact that the Chamber is the only donor to a 527 organization thus far that the Commission has found reason to believe violated the law in connection with its contributions further adds to the litigation risk with regard to the Chamber.

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SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5937
DATE COMPLAINT FILED: September 4, 2007
DATE OF NOTIFICATION: September 11, 2007
LAST RESPONSE RECEIVED: November 2, 2007
DATE ACTIVATED: December 4, 2007

EXPIRATION OF STATUTE OF
LIMITATIONS: June 24, 2012

COMPLAINANT:

Greg Sabine

RESPONDENTS:

Romney for President, Inc. and
Darrell Crate, in his official capacity
as treasurer
Kem Gardner

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(8)(A)
2 U.S.C. §§ 431(8)(B)(i) and (iv)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.74
11 C.F.R. § 100.79

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that Kem Gardner made, and Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer ("RFP") accepted, an excessive in-kind contribution when Gardner paid \$150,000 to charter an airline plane to fly himself and a large number of other persons from Utah to Boston to work as volunteers at an RFP fundraising event.

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1 Complaint at 1. In their responses, both RFP and Gardner contend that travel expenses incurred
2 to attend fundraisers are not contributions. As discussed in more detail below, however, Gardner
3 and the attendees accompanying him on his chartered flight were volunteers providing services
4 on behalf of the candidate, and any unreimbursed volunteer travel payment exceeding \$1,000
5 constitutes a contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79. Accordingly, given
6 that the volunteers onboard the chartered flight did not reimburse Gardner for any travel
7 expenses, his reported payment of \$150,000 for the flight constitutes an in-kind contribution
8 exceeding the maximum allowable limit pursuant to 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R.
9 § 100.79. Thus, Kem Gardner made, and RFP received, an excessive in-kind contribution. RFP
10 also failed to report the receipt of the in-kind contribution. Therefore, we recommend that the
11 Commission find reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a) and that
12 Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated
13 2 U.S.C. §§ 434(b) and 441a(f). We also recommend that the Commission enter into pre-
14 probable conciliation with both Mr. Gardner and RFP.

15 **II. FACTUAL SUMMARY**

16 The event in issue, which RFP dubbed "America's Calling," took place on June 25, 2007.
17 RFP's June 25, 2007 press release following the event states "Mitt Romney, family, friends and
18 supporters gathered at the TD Banknorth Garden to reach across the country and raise the
19 resources necessary for a national campaign" and notes that the participants made more than
20 20,000 telephone calls. The press release also states that the calling arena, which was more than
21 17,000 square feet, housed more than 600 volunteer fundraisers who used 400 landline phones.
22 The calling event raised approximately \$2 million. RFP Response at 2. The press was invited to

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1 cover the event and it received extensive press coverage.¹ *See, e.g., Romney raises campaign*
 2 *cash at Boston sports venues*, June 25, 2007; Michael Luo, *Romney Campaign Reaches Back*
 3 *Into His Deep Pockets*, New York Times, June 26, 2007.

4 In a video posted on the campaign's website, RFP national finance director Spencer
 5 Zwick, shown speaking the evening before the calling event, stated:

6 Well, we've got a great group of supporters from around the
 7 country. . . .we have close to a thousand people that have
 8 traveled at their own expense coming to Boston with the idea
 9 that they are going to raise money to help us push toward the
 10 end of the quarter. So tonight [a Fenway Park barbecue on
 11 July 24] is a thank you for their support, but by and large we
 12 are here to raise money. So starting tomorrow, we'll go to the
 13 Boston Garden and they will call their personal rolodex. They'll
 14 call their friends. They'll call their family. They'll call people
 15 that maybe contributed a little bit but need to contribute some
 16 more. So our goal is to raise money and expand our base of
 17 support.

18 Available at <http://mittromney.permissiontv.com/index.html>.
 19
 20

¹ The June 25, 2007 event followed an extremely successful similar event sponsored by the Romney campaign in January 2007, called "National Calling Day." According to a press account concerning the earlier event, Spencer Zwick, RFP's fundraising director, reportedly wanted Romney, a multimillionaire, to avoid the fates of other wealthy candidates, like Steve Forbes and Ross Perot, who provided considerable self-financing. Zwick is quoted as saying, "By Mitt or anyone else self-funding, you don't have a lot of people making investments in you.... To be credible, you have to show that you have raised resources from around the country." *See* David D. Kirkpatrick, *Romney Used His Wealth to Enlist Richest Donors*, The New York Times, April 6, 2007. Thus, according to the article,

[i]nstead of tapping his own money directly, Mr. Romney embarked on an effort to leverage his personal fortune into donations to his Republican primary campaign.... At the start of the first quarter of this year, for example, Mr. Romney lent his campaign \$2.35 million to pay for an elaborate demonstration of just how fast he could raise money from others. He rented the Boston convention center, furnished it with more than 400 laptop computers, loaded each with custom software and had more than 400 telephone lines installed. He invited 400 wealthy supporters, including dozens of chief executives he knew through business connections, to a reception at an adjacent hotel. The next day each sat down before a personal-contact list loaded into an assigned laptop, with dozens of technical support staff and campaign finance advisers standing by to assist. Reporters watched from the sidelines for hours as Mr. Romney's supporters raised \$6.5 million.

Id.

1 Kem Gardner, a resident of Utah, states in his response to the complaint that at the
2 invitation of RFP, he traveled to Boston to raise funds for RFP and to attend a Fenway Park
3 dinner, and chartered a plane at his own expense for his travel to and from Boston. He also states
4 that he invited a large group of friends and families who were planning to attend the events to
5 accompany him on the plane.² Gardner Response at 1-2. His response does not address the
6 alleged \$150,000 cost of the plane, which was based on a press article attached to the complaint.
7 *See Thomas Burt, Did Utah violate contribution laws by paying for Romney volunteers' flight*
8 *to Boston?*. The Salt Lake Tribune, June 29, 2007 (reporting that Gardner told The Salt Lake
9 Tribune that he paid \$150,000 to charter a Jet Blue plane to fly Utahns to Boston).³ At the time
10 of the event, Gardner had already contributed \$2,300 to RFP, the maximum for the primary; he
11 never made a monetary contribution to Romney for the general election.

12 **III. ANALYSIS**

13 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no
14 person shall make contributions to any candidate and his authorized political committee with
15 respect to any election for Federal office that, in the aggregate, exceed \$2,300. 2 U.S.C.
16 § 441a(a)(1). The Act also provides that no candidate or political committee shall knowingly

² Kem Gardner is the founder of the Gardner Company, a commercial and real estate development firm. Known for being active in Utah affairs, Gardner was instrumental in persuading Romney to serve as the CEO of the organizing committee for the 2002 Winter Olympic Games, which at the time were embroiled in numerous financial scandals. *See David Lightman, Candidate known as turnaround artist, Islandpacket.com* (January 12, 2008) available at <http://www.islandpacket.com/news/local/story/128897.html>. Romney's subsequent actions as CEO have been credited with "rescuing" these Olympic Games. *See Kirk Johnson, The Long Run: In Olympics Success, Romney Found New Edge*, The New York Times, September 19, 2007. In a July 31, 2007 RFP press release, Romney named Gardner one of the RFP's National Finance Co-Chairs for the State of Utah.

³ Gardner's Response also does not address how many people he transported. On his website, blogger Eli Eyre, who attended the "America's Calling" event, apparently traveling on Gardner's plane, states "Kem Gardner chartered the whole flight, and between the 150 people on the plane, about \$700,000 was raised. Not bad." <http://elijahscsevire.blogspot.com>. The press account attached to the complaint account also reports that 150 people were onboard the chartered flight.

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1 accept any contribution in violation of the prescribed limits, 2 U.S.C. § 441a(f), and that political
2 committees must report all contributions. 2 U.S.C. § 434(b). The Act defines the term
3 "contribution" as (1) "any gift, subscription, loan, advance, or deposit of money or anything of
4 value made by any person for the purpose of influencing any election for Federal office."
5 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R. § 100.52. ("anything of value" includes all in-kind
6 contributions).

7 The Act exempts from the definition of contribution "the value of services provided
8 without compensation by any individual who volunteers on behalf of a candidate or political
9 committee," 2 U.S.C. § 431(8)(B)(i), 11 C.F.R. § 100.74 (the "volunteer exception"), as well as,
10 in pertinent part, any unreimbursed payment for travel expenses made by any individual on
11 behalf of a candidate to the extent that the cumulative value of such activity by such individual
12 does not exceed \$1,000 with respect to any one election. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R.
13 § 100.79.

14 In Advisory Opinion ("AO") 2007-8, the Commission stated that the volunteer exception
15 "is restricted to donations of the volunteer's own time and services and does not generally
16 exempt actual costs incurred on behalf of a Federal candidate or political party." As an
17 illustration of that restriction, the Commission advised that if the AO requester traveled across
18 the country at the request of a Federal candidate to arrange for an entertainer to perform at the
19 candidate's campaign event, then the unreimbursed payment for that travel would be a
20 contribution to that candidate's committee to the extent that it exceeded \$1,000. *Id.*

21 In its Response, RFP appears to suggest that if attendees travel to an event that is
22 nominally a "fundraiser"—that is, an event at which funds are raised—the travel expenses are not
23 subject to the restrictions on the volunteer exception. According to the RFP, the complaint

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1 apparently contends that outside the volunteer exception, "federal committees must pay for the
2 travel of *all* fundraising event attendees *for every* type of fundraising event." RFP Response at 1
3 (emphasis in original). But the complaint does not say this and it is not the case.

4 There is a distinction between typical fundraising events at which attendees eat lunch or
5 dinner, dance, play golf, view performances, and/or listen to speakers, and other such events
6 where the attendees provide uncompensated services to the campaign. As to the former, where
7 individuals do not provide services on behalf of the candidate, but merely make or deliver
8 contributions, their travel costs over \$1,000 are not in-kind contributions. See MUR 5020
9 (Trump Hotels and Casinos *et al.*) (a supporter's payment of his plane ticket and a friend's plane
10 ticket to a candidate's fundraiser was not an in-kind contribution, given that neither did any work
11 on behalf of the candidate at the fundraiser). On the other hand, where the event involves
12 volunteers, at the invitation of the campaign, expending their time and services on behalf of the
13 candidate, the Act and the regulations provide that their unreimbursed travel expenses exceeding
14 \$1,000 are contributions. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

15 Kem Gardner and his fellow attendees, at the invitation of RFP, participated as volunteer
16 fundraisers for Mitt Romney in the "America's Calling" event. A January 9, 2008 press release,
17 in which RFP announced the results of another volunteer phone-a-thon in Boston on that date,
18 states that "[t]oday marks the first Romney for President finance event in which general election
19 dollars were raised." Since the June 25, 2007 event was therefore geared to raising funds for the
20 primary, for which Gardner had already "maxed-out," it appears that Gardner's participation in
21 that event was solely devoted to raising money from others on Romney's behalf. That would
22 have been true for the other participants who had already made the maximum contribution to
23 Romney for the primary by June 25, 2007.

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1 RFP attempts to downplay the use of the volunteer services by describing the event as one
2 "where donors were invited to bring check contributions, solicit friends and personal contacts,
3 and socialize with other donors....a large fundraiser where *donors*—some 'maxed out,' and some
4 not—also solicited contributions." RFP Response at 2. (Emphasis in the original). But RFP's
5 own press releases and website videos show otherwise, as they reveal a meticulously staged
6 phone-a-thon that reflected a massive volunteer effort.

7 Far from the volunteer activity being incidental to the fundraising event, it was, in fact,
8 the event itself. In effect, "America's Calling" constituted a human telephone bank staffed by
9 Romney supporters, which, over the course of several hours, made thousands of similar phone
10 calls touting Mitt Romney and soliciting contributions. *Cf.* 11 C.F.R. §§ 100.26-28.

11 Accordingly, the participants' donations of their time and service, and their unreimbursed travel
12 expenses not in excess of \$1,000, were not contributions. However, as an unreimbursed travel
13 expense exceeding \$1,000, the reported \$150,000 cost Gardner incurred in chartering a plane to
14 travel to and from the event, constituted an excessive in-kind contribution. *See* 2 U.S.C.
15 § 431(8)(B)(iv), 11 C.F.R. § 100.79.

16 Based on the above, we recommend that the Commission find reason to believe that Kem
17 Gardner violated 2 U.S.C. § 441a(a) by making an excessive in-kind contribution to Romney for
18 President, Inc. consisting of unreimbursed travel expenses exceeding \$1,000 paid on behalf of
19 the candidate.⁴ RFP has long known that Gardner paid for these travel expenses on behalf of the
20 candidate/campaign and did not reimburse him. Therefore, we also recommend that the

⁴ The complaint references the aforementioned January 2007 calling event, *supra* footnote 1, and suggests that the Commission should also investigate whether there were excessive in-kind contributions for travel in connection with that event. Complaint at 1. The complaint contains no specific allegations concerning the January 2007 event, and we have found no information suggesting that any volunteers (or others) chartered a plane or otherwise incurred considerable travel expenses to participate in that event.

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V. RECOMMENDATIONS

1. Find reason to believe that Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive in-kind contribution;
2. Find reason to believe that Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer violated 2 U.S.C. § 434(b) by failing to disclose an excessive in-kind contribution;
3. Find reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a) by making an excessive in-kind contribution to Romney for President Inc;
4. Enter into pre-probable cause conciliation with Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, and Kem Gardner, prior to a finding of probable cause to believe;
5. Approve the attached Conciliation Agreements;
6. Approve the attached Factual and Legal Analyses; and

7. Approve the appropriate letters.

2/29/08

Date

Thomasenia P. Duncan
General Counsel

BY:



Mark D. Shonkwiler
Acting Deputy Associate General Counsel
for Enforcement



Susan L. Lebeaux
Assistant General Counsel



Roy Q. Lockett
Attorney

Attachments

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- 3. Factual and Legal Analysis for Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer
- 4. Factual and Legal Analysis for Kem Gardner

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Romney for President, Inc. and Darrell Crate, MUR 5937
5 in his official capacity as treasurer
6

7 **I. INTRODUCTION**

8
9 The complaint in this matter alleges that Kem Gardner made, and Romney for President, Inc.
10 and Darrell Crate, in his official capacity as treasurer ("RFP") accepted, an excessive in-kind
11 contribution when Gardner paid \$150,000 to charter an airline plane to fly himself and a large
12 number of other persons from Utah to Boston to work as volunteers at an RFP fundraising event.
13 Complaint at 1. In response, RFP contends that travel expenses incurred to attend fundraisers are
14 not contributions. As discussed in more detail below, however, Gardner and the attendees
15 accompanying him on his chartered flight were volunteers providing services on behalf of the
16 candidate, and any unreimbursed volunteer travel payment exceeding \$1,000 constitutes a
17 contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79. Accordingly, given that the
18 volunteers onboard the chartered flight did not reimburse Gardner for any travel expenses, his
19 reported payment of \$150,000 for the flight constitutes an in-kind contribution exceeding the
20 maximum allowable limit pursuant to 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.79. Thus, Kem
21 Gardner made, and RFP received, an excessive in-kind contribution. The RFP also failed to report
22 the receipt of the in-kind contribution. Therefore, the Commission has found reason to believe that
23 Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C.
24 §§ 434(b) and 441a(f).

29044243245

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Facts**

3
4 The event in issue, which RFP dubbed "America's Calling," took place on June 25, 2007.

5 RFP's June 25, 2007 press release following the event states "Mitt Romney, family, friends and
6 supporters gathered at the TD Banknorth Garden to reach across the country and raise the resources
7 necessary for a national campaign" and notes that the participants made more than 20,000 telephone
8 calls. The press release also states that the calling arena, which was more than 17,000 square feet,
9 housed more than 600 volunteer fundraisers who used 400 landline phones. The calling event raised
10 approximately \$2 million. RFP Response at 2. The press was invited to cover the event and it
11 received extensive press coverage.¹ See, e.g., *Romney raises campaign cash at Boston sports*
12 *venues*, June 25, 2007; Michael Luo, *Romney Campaign Reaches Back Into His Deep Pockets*, *New*
13 *York Times*, June 26, 2007.

¹ The June 25, 2007 event followed an extremely successful similar event sponsored by the Romney campaign in January 2007, called "National Calling Day." According to a press account concerning the earlier event, Spencer Zwick, RFP's fundraising director, reportedly wanted Romney, a multimillionaire, to avoid the fates of other wealthy candidates, like Steve Forbes and Ross Perot, who provided considerable self-financing. Zwick is quoted as saying, "By Min or anyone else self-funding, you don't have a lot of people making investments in you.... To be credible, you have to show that you have raised resources from around the country." See David D. Kirkpatrick, *Romney Used His Wealth to Enlist Richest Donors*, *The New York Times*, April 6, 2007. Thus, according to the article,

[i]nstead of tapping his own money directly, Mr. Romney embarked on an effort to leverage his personal fortune into donations to his Republican primary campaign.... At the start of the first quarter of this year, for example, Mr. Romney lent his campaign \$2.35 million to pay for an elaborate demonstration of just how fast he could raise money from others. He rented the Boston convention center, furnished it with more than 400 laptop computers, loaded each with custom software and had more than 400 telephone lines installed. He invited 400 wealthy supporters, including dozens of chief executives he knew through business connections, to a reception at an adjacent hotel. The next day each sat down before a personal-contact list loaded into an assigned laptop, with dozens of technical support staff and campaign finance advisers standing by to assist. Reporters watched from the sidelines for hours as Mr. Romney's supporters raised \$6.5 million.

Id

29044243246

1 In a video posted on the campaign's website, RFP national finance director Spencer Zwick,
2 shown speaking the evening before the calling event, stated:

3 Well, we've got a great group of supporters from around the
4 country. . . . we have close to a thousand people that have
5 traveled at their own expense coming to Boston with the idea
6 that they are going to raise money to help us push toward the
7 end of the quarter. So tonight [a Fenway Park barbecue on
8 July 24] is a thank you for their support, but by and large we
9 are here to raise money. So starting tomorrow, we'll go to the Boston
10 Garden and they will call their personal rolodex. They'll call their
11 friends. They'll call their family. They'll call people
12 that maybe contributed a little bit but need to contribute some more.
13 So our goal is to raise money and expand our base of support.

14
15 Available at <http://mittromney.permissiontv.com/index.html>.

16
17 The available information indicates that Utah resident Kern Gardner, at the invitation of
18 RFP, traveled to Boston to raise funds for RFP and to attend a Fenway Park dinner, and chartered a
19 plane at his own expense for his travel to and from Boston. He also apparently invited a large group
20 of friends and families who were planning to attend the events to accompany him on the plane.²
21 RFP's response does not address the alleged \$150,000 cost of the plane, which was based on a press
22 article attached to the complaint. See Thomas Burr, *Did Utahn violate contribution laws by paying*
23 *for Romney volunteers' flight to Boston?*, The Salt Lake Tribune, June 29, 2007 (reporting that
24 Gardner told The Salt Lake Tribune that he paid \$150,000 to charter a Jet Blue plane to fly Utahns

² Kern Gardner is the founder of the Gardner Company, a commercial and real estate development firm. Known for being active in Utah affairs, Gardner was instrumental in persuading Romney to serve as the CEO of the organizing committee for the 2002 Winter Olympic Games, which at the time were embroiled in numerous financial scandals. See David Lightman, *Candidate known as turnaround artist*, Islandpacket.com (January 12, 2008) available at <http://www.islandpacket.com/news/local/story/128897.html>. Romney's subsequent actions as CEO have been credited with "rescuing" these Olympic Games. See Kirk Johnson, *The Long Run: In Olympics Success, Romney Found New Edge*, The New York Times, September 19, 2007. In a July 31, 2007 RFP press release, Romney named Gardner one of the RFP's National Finance Co-Chairs for the State of Utah.

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1 to Boston).³ At the time of the event, Gardner had already contributed \$2,300 to RFP, the
2 maximum for the primary; he never made a monetary contribution to Romney for the general
3 election.

4 **B. Analysis**

5 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no
6 person shall make contributions to any candidate and his authorized political committee with respect
7 to any election for Federal office that, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1). The
8 Act also provides that no candidate or political committee shall knowingly accept any contribution
9 in violation of the prescribed limits, 2 U.S.C. § 441a(f), and that political committees must report all
10 contributions. 2 U.S.C. § 434(b). The Act defines the term "contribution" as (1) "any gift,
11 subscription, loan, advance, or deposit of money or anything of value made by any person for the
12 purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R.
13 § 100.52. ("anything of value" includes all in-kind contributions).

14 The Act exempts from the definition of contribution "the value of services provided without
15 compensation by any individual who volunteers on behalf of a candidate or political committee,"
16 2 U.S.C. § 431(8)(B)(i), 11 C.F.R. § 100.74 (the "volunteer exception"), as well as, in pertinent part,
17 any unreimbursed payment for travel expenses made by any individual on behalf of a candidate to
18 the extent that the cumulative value of such activity by such individual does not exceed \$1,000 with
19 respect to any one election. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

20
³ RFP's Response also does not address how many people he transported. On his website, blogger Eli Eyre, who attended the "America's Calling" event, apparently traveling on Gardner's plane, states "Kem Gardner chartered the whole flight, and between the 150 people on the plane, about \$700,000 was raised. Not bad." <http://elijahscsevire.blogspot.com>. The press account attached to the complaint account also reports that 150 people were onboard the chartered flight.

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1 In Advisory Opinion ("AO") 2007-8, the Commission stated that the volunteer exception "is
2 restricted to donations of the volunteer's own time and services and does not generally exempt
3 actual costs incurred on behalf of a Federal candidate or political party." As an illustration of that
4 restriction, the Commission advised that if the AO requester traveled across the country at the
5 request of a Federal candidate to arrange for an entertainer to perform at the candidate's campaign
6 event, then the unreimbursed payment for that travel would be a contribution to that candidate's
7 committee to the extent that it exceeded \$1,000. *Id.*

8 In its Response, RFP appears to suggest that if attendees travel to an event that is nominally
9 a "fundraiser"—that is, an event at which funds are raised—the travel expenses are not subject to
10 the restrictions on the volunteer exception. According to the RFP, the complaint apparently
11 contends that outside the volunteer exception, "federal committees must pay for the travel of *all*
12 fundraising event attendees *for every* type of fundraising event." RFP Response at 1 (emphasis in
13 original). But the complaint does not say this and it is not the case.

14 There is a distinction between typical fundraising events at which attendees eat lunch or
15 dinner, dance, play golf, view performances, and/or listen to speakers, and other such events where
16 the attendees provide uncompensated services to the campaign. As to the former, where individuals
17 do not provide services on behalf of the candidate, but merely make or deliver contributions, their
18 travel costs over \$1,000 are not in-kind contributions. See MUR 5020 (Trump Hotels and Casinos
19 *et al.*) (a supporter's payment of his plane ticket and a friend's plane ticket to a candidate's
20 fundraiser was not an in-kind contribution, given that neither did any work on behalf of the
21 candidate at the fundraiser). On the other hand, where the event involves volunteers, at the
22 invitation of the campaign, expending their time and services on behalf of the candidate, the Act and

1 the regulations provide that their unreimbursed travel expenses exceeding \$1,000 are contributions.
2 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

3 Kem Gardner and his fellow attendees, at the invitation of RFP, participated as volunteer
4 fundraisers for Mitt Romney in the "America's Calling" event. A January 9, 2008 press release, in
5 which RFP announced the results of another volunteer phone-a-thon in Boston on that date, states
6 that "[t]oday marks the first Romney for President finance event in which general election dollars
7 were raised." Since the June 25, 2007 event was therefore geared to raising funds for the primary,
8 for which Gardner had already "maxed-out," it appears that Gardner's participation in that event
9 was solely devoted to raising money from others on Romney's behalf. That would have been true
10 for the other participants who had already made the maximum contribution to Romney for the
11 primary by June 25, 2007.

12 RFP attempts to downplay the use of the volunteer services by describing the event as one
13 "where donors were invited to bring check contributions, solicit friends and personal contacts, and
14 socialize with other donors...a large fundraiser where *donors*—some 'maxed out,' and some not—
15 also solicited contributions." RFP Response at 2. (Emphasis in the original). But RFP's own press
16 releases and website videos show otherwise, as they reveal a meticulously staged phone-a-thon that
17 reflected a massive volunteer effort.

18 Far from the volunteer activity being incidental to the fundraising event, it was, in fact, the
19 event itself. In effect, "America's Calling" constituted a human telephone bank staffed by Romney
20 supporters, which, over the course of several hours, made thousands of similar phone calls touting
21 Mitt Romney and soliciting contributions. Cf. 11 C.F.R. §§ 100.26-28. Accordingly, the
22 participants' donations of their time and service, and their unreimbursed travel expenses not in

1 excess of \$1,000, were not contributions. However, as an unreimbursed travel expense exceeding
2 \$1,000, the reported \$150,000 cost Gardner incurred in chartering a plane to travel to and from the
3 event, constituted an excessive in-kind contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R.
4 § 100.79.

5 Therefore, since RFP has long known that Gardner paid in excess of \$1,000 in travel
6 expenses on behalf of the candidate and did not reimburse him, there is reason to believe that
7 Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer violated 2 U.S.C.
8 § 441a(f) by knowingly accepting an excessive in-kind contribution.⁴ Additionally, because RFP
9 did not report Gardner's in-kind contribution, there is reason to believe that Romney for President,
10 Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

⁴ The complaint references the aforementioned January 2007 calling event, *supra* footnote 1, and suggests that the Commission should also investigate whether there were excessive in-kind contributions for travel in connection with that event. Complaint at 1. The complaint contains no specific allegations concerning the January 2007 event, and there is no available information suggesting that any volunteers (or others) chartered a plane or otherwise incurred considerable travel expenses to participate in that event.

29044243251

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Kem Gardner

MUR 5937

5
6
7 **I. INTRODUCTION**

8
9 The complaint in this matter alleges that Kem Gardner made, and Romney for President, Inc.
10 and Darrell Crate, in his official capacity as treasurer ("RFP") accepted, an excessive in-kind
11 contribution when Gardner paid \$150,000 to charter an airline plane to fly himself and a large
12 number of other persons from Utah to Boston to work as volunteers at an RFP fundraising event.
13 Complaint at 1. In response, Gardner contends that travel expenses incurred to attend fundraisers
14 are not contributions. As discussed in more detail below, however, Gardner and the attendees
15 accompanying him on his chartered flight were volunteers providing services on behalf of the
16 candidate, and any unreimbursed volunteer travel payment exceeding \$1,000 constitutes a
17 contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79. Accordingly, given that the
18 volunteers onboard the chartered flight did not reimburse Gardner for any travel expenses, his
19 reported payment of \$150,000 for the flight constitutes an in-kind contribution exceeding the
20 maximum allowable limit pursuant to 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.79. Thus, Kem
21 Gardner made, and RFP received, an excessive in-kind contribution. Therefore, the Commission
22 has found reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a).

23 **II. FACTUAL AND LEGAL ANALYSIS**

24 **A. Facts**

25 The event in issue, which RFP dubbed "America's Calling," took place on June 25, 2007.

26 RFP's June 25, 2007 press release following the event states "Mitt Romney, family, friends and
27

1 supporters gathered at the TD Banknorth Garden to reach across the country and raise the resources
2 necessary for a national campaign” and notes that the participants made more than 20,000 telephone
3 calls. The press release also states that the calling arena, which was more than 17,000 square feet,
4 housed more than 600 volunteer fundraisers who used 400 landline phones. The calling event raised
5 approximately \$2 million. RFP Response at 2. The press was invited to cover the event and it
6 received extensive press coverage.¹ See, e.g., *Romney raises campaign cash at Boston sports*
7 *venues*, June 25, 2007; Michael Luo, *Romney Campaign Reaches Back Into His Deep Pockets*, New
8 York Times, June 26, 2007.

9 In a video posted on the campaign’s website, RFP national finance director Spencer Zwick,
10 shown speaking the evening before the calling event, stated:

11

¹ The June 25, 2007 event followed an extremely successful similar event sponsored by the Romney campaign in January 2007, called “National Calling Day.” According to a press account concerning the earlier event, Spencer Zwick, RFP’s fundraising director, reportedly wanted Romney, a multimillionaire, to avoid the fates of other wealthy candidates, like Steve Forbes and Ross Perot, who provided considerable self-financing. Zwick is quoted as saying, “By Mitt or anyone else self-funding, you don’t have a lot of people making investments in you.... To be credible, you have to show that you have raised resources from around the country.” See David D. Kirkpatrick, *Romney Used His Wealth to Enlist Richest Donors*, The New York Times, April 6, 2007. Thus, according to the article,

[i]nstead of tapping his own money directly, Mr. Romney embarked on an effort to leverage his personal fortune into donations to his Republican primary campaign.... At the start of the first quarter of this year, for example, Mr. Romney lent his campaign \$2.35 million to pay for an elaborate demonstration of just how fast he could raise money from others. He rented the Boston convention center, furnished it with more than 400 laptop computers, loaded each with custom software and had more than 400 telephone lines installed. He invited 400 wealthy supporters, including dozens of chief executives he knew through business connections, to a reception at an adjacent hotel. The next day each sat down before a personal-contact list loaded into an assigned laptop, with dozens of technical support staff and campaign finance advisers standing by to assist. Reporters watched from the sidelines for hours as Mr. Romney’s supporters raised \$6.5 million.

Id.

1 Well, we've got a great group of supporters from around the
2 country. . . .we have close to a thousand people that have
3 traveled at their own expense coming to Boston with the idea
4 that they are going to raise money to help us push toward the
5 end of the quarter. So tonight [a Fenway Park barbecue on
6 July 24] is a thank you for their support, but by and large we
7 are here to raise money. So starting tomorrow, we'll go to the Boston
8 Garden and they will call their personal rolodex. They'll call their
9 friends. They'll call their family. They'll call people
10 that maybe contributed a little bit but need to contribute some more.
11 So our goal is to raise money and expand our base of support.
12

13 Available at <http://mittromney.permissiontv.com/index.html>.

14
15 Kem Gardner, a resident of Utah, states in his response to the complaint that at the invitation
16 of RFP, he traveled to Boston to raise funds for RFP and to attend a Fenway Park dinner, and
17 chartered a plane at his own expense for his travel to and from Boston. He also states that he invited
18 a large group of friends and families who were planning to attend the events to accompany him on
19 the plane.² Gardner Response at 1-2. His response does not address the alleged \$150,000 cost of
20 the plane, which was based on a press article attached to the complaint. See Thomas Burr, *Did*
21 *Utahn violate contribution laws by paying for Romney volunteers' flight to Boston?*, The Salt Lake
22 Tribune, June 29, 2007 (reporting that Gardner told The Salt Lake Tribune that he paid \$150,000 to
23 charter a Jet Blue plane to fly Utahns to Boston).³ At the time of the event, Gardner had already

² Kem Gardner is the founder of the Gardner Company, a commercial and real estate development firm. Known for being active in Utah affairs, Gardner was instrumental in persuading Romney to serve as the CEO of the organizing committee for the 2002 Winter Olympic Games, which at the time were embroiled in numerous financial scandals. See David Lightman, *Candidate known as turnaround artist*, [Islandpacket.com](http://www.islandpacket.com/news/local/story/128897.html) (January 12, 2008) available at <http://www.islandpacket.com/news/local/story/128897.html>. Romney's subsequent actions as CEO have been credited with "rescuing" these Olympic Games. See Kirk Johnson, *The Long Run: In Olympics Success, Romney Found New Edge*, The New York Times, September 19, 2007. In a July 31, 2007 RFP press release, Romney named Gardner one of the RFP's National Finance Co-Chairs for the State of Utah.

³ Gardner's Response also does not address how many people he transported. On his website, blogger Eli Eyre, who attended the "America's Calling" event, apparently traveling on Gardner's plane, states "Kem Gardner chartered the whole flight, and between the 150 people on the plane, about \$700,000 was raised. Not bad." <http://elijahscsevre.blogspot.com>. The press account attached to the complaint account also reports that 150 people were onboard the chartered flight.

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1 contributed \$2,300 to RFP, the maximum for the primary; he never made a monetary contribution to
2 Romney for the general election.

3 **B. Analysis**

4 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no
5 person shall make contributions to any candidate and his authorized political committee with respect
6 to any election for Federal office that, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1). The
7 Act also provides that no candidate or political committee shall knowingly accept any contribution
8 in violation of the prescribed limits, 2 U.S.C. § 441a(f), and that political committees must report all
9 contributions. 2 U.S.C. § 434(b). The Act defines the term "contribution" as (1) "any gift,
10 subscription, loan, advance, or deposit of money or anything of value made by any person for the
11 purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R.
12 § 100.52. ("anything of value" includes all in-kind contributions).

13 The Act exempts from the definition of contribution "the value of services provided without
14 compensation by any individual who volunteers on behalf of a candidate or political committee,"
15 2 U.S.C. § 431(8)(B)(i), 11 C.F.R. § 100.74 (the "volunteer exception"), as well as, in pertinent part,
16 any unreimbursed payment for travel expenses made by any individual on behalf of a candidate to
17 the extent that the cumulative value of such activity by such individual does not exceed \$1,000 with
18 respect to any one election. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

19 In Advisory Opinion ("AO") 2007-8, the Commission stated that the volunteer exception "is
20 restricted to donations of the volunteer's own time and services and does not generally exempt
21 actual costs incurred on behalf of a Federal candidate or political party." As an illustration of that
22 restriction, the Commission advised that if the AO requester traveled across the country at the

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1 request of a Federal candidate to arrange for an entertainer to perform at the candidate's campaign
2 event, then the unreimbursed payment for that travel would be a contribution to that candidate's
3 committee to the extent that it exceeded \$1,000. *Id.*

4 Gardner's response to the complaint appears to suggest that if attendees travel to an event
5 that is nominally a "fundraiser"—that is, an event at which funds are raised—the travel expenses are
6 not subject to the restrictions on the volunteer exception. There is a distinction between typical
7 fundraising events at which attendees eat lunch or dinner, dance, play golf, view performances,
8 and/or listen to speakers, and other such events where the attendees provide uncompensated services
9 to the campaign. As to the former, where individuals do not provide services on behalf of the
10 candidate, but merely make or deliver contributions, their travel costs over \$1,000 are not in-kind
11 contributions. *See* MUR 5020 (Trump Hotels and Casinos *et al.*) (a supporter's payment of his
12 plane ticket and a friend's plane ticket to a candidate's fundraiser was not an in-kind contribution,
13 given that neither did any work on behalf of the candidate at the fundraiser). On the other hand,
14 where the event involves volunteers, at the invitation of the campaign, expending their time and
15 services on behalf of the candidate, the Act and the regulations provide that their unreimbursed
16 travel expenses exceeding \$1,000 are contributions. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

17 Kem Gardner and his fellow attendees, at the invitation of RFP, participated as volunteer
18 fundraisers for Mitt Romney in the "America's Calling" event. A January 9, 2008 press release, in
19 which RFP announced the results of another volunteer phone-a-thon in Boston on that date, states
20 that "[t]oday marks the first Romney for President finance event in which general election dollars
21 were raised." Since the June 25, 2007 event was therefore geared to raising funds for the primary,
22 for which Gardner had already "maxed-out," it appears that Gardner's participation in that event

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1 was solely devoted to raising money from others on Romney's behalf. That would have been true
2 for the other participants who had already made the maximum contribution to Romney for the
3 primary by June 25, 2007. Accordingly, the participants' donations of their time and service, and
4 their unreimbursed travel expenses not in excess of \$1,000, were not contributions. However, as an
5 unreimbursed travel expense exceeding \$1,000, the reported \$150,000 cost Gardner incurred in
6 chartering a plane to travel to and from the event, constituted an excessive in-kind contribution. See
7 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

8 Therefore, there is reason to believe Kem Gardner violated 2 U.S.C. § 441a(a) by making an
9 excessive in-kind contribution to Romney for President, Inc. consisting of unreimbursed travel
10 expenses exceeding \$1,000 paid on behalf of the candidate.⁴

⁴ The complaint references the aforementioned January 2007 calling event, *supra* footnote 1, and suggests that the Commission should also investigate whether there were excessive in-kind contributions for travel in connection with that event. Complaint at 1. The complaint contains no specific allegations concerning the January 2007 event, and there is no available information suggesting that Kem Gardner chartered a plane or otherwise incurred considerable travel expenses to participate in that event.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Romney for President, Inc. and Darrell Crate, MUR 5937
5 in his official capacity as treasurer
6

7 **1. INTRODUCTION**

8
9 The complaint in this matter alleges that Kern Gardner made, and Romney for President, Inc.
10 and Darrell Crate, in his official capacity as treasurer ("RFP") accepted, an excessive in-kind
11 contribution when Gardner paid \$150,000 to charter an airline plane to fly himself and a large
12 number of other persons from Utah to Boston to work as volunteers at an RFP fundraising event.
13 Complaint at 1. In response, RFP contends that travel expenses incurred to attend fundraisers are
14 not contributions. As discussed in more detail below, however, Gardner and the attendees
15 accompanying him on his chartered flight were volunteers providing services on behalf of the
16 candidate, and any unreimbursed volunteer travel payment exceeding \$1,000 constitutes a
17 contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79. Accordingly, given that the
18 volunteers onboard the chartered flight did not reimburse Gardner for any travel expenses, his
19 reported payment of \$150,000 for the flight constitutes an in-kind contribution exceeding the
20 maximum allowable limit pursuant to 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.79. Thus, Kern
21 Gardner made, and RFP received, an excessive in-kind contribution. The RFP also failed to report
22 the receipt of the in-kind contribution. Therefore, the Commission has found reason to believe that
23 Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C.
24 §§ 434(b) and 441a(f).

29044243259

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Facts**

3
4 The event in issue, which RFP dubbed "America's Calling," took place on June 25, 2007.

5 RFP's June 25, 2007 press release following the event states "Mitt Romney, family, friends and
6 supporters gathered at the TD Banknorth Garden to reach across the country and raise the resources
7 necessary for a national campaign" and notes that the participants made more than 20,000 telephone
8 calls. The press release also states that the calling arena, which was more than 17,000 square feet,
9 housed more than 600 volunteer fundraisers who used 400 landline phones. The calling event raised
10 approximately \$2 million. RFP Response at 2. The press was invited to cover the event and it
11 received extensive press coverage.¹ See, e.g., *Romney raises campaign cash at Boston sports*
12 *venues*, June 25, 2007; Michael Luo, *Romney Campaign Reaches Back Into His Deep Pockets*, *New*
13 *York Times*, June 26, 2007.

¹ The June 25, 2007 event followed an extremely successful similar event sponsored by the Romney campaign in January 2007, called "National Calling Day." According to a press account concerning the earlier event, Spencer Zwick, RFP's fundraising director, reportedly wanted Romney, a multimillionaire, to avoid the fates of other wealthy candidates, like Steve Forbes and Ross Perot, who provided considerable self-financing. Zwick is quoted as saying, "By Mitt or anyone else self-funding, you don't have a lot of people making investments in you.... To be credible, you have to show that you have raised resources from around the country." See David D. Kirkpatrick, *Romney Used His Wealth to Enlist Richest Donors*, *The New York Times*, April 6, 2007. Thus, according to the article,

[i]nstead of tapping his own money directly, Mr. Romney embarked on an effort to leverage his personal fortune into donations to his Republican primary campaign.... At the start of the first quarter of this year, for example, Mr. Romney lent his campaign \$2.35 million to pay for an elaborate demonstration of just how fast he could raise money from others. He rented the Boston convention center, furnished it with more than 400 laptop computers, loaded each with custom software and had more than 400 telephone lines installed. He invited 400 wealthy supporters, including dozens of chief executives he knew through business connections, to a reception at an adjacent hotel. The next day each sat down before a personal-contact list loaded into an assigned laptop, with dozens of technical support staff and campaign finance advisers standing by to assist. Reporters watched from the sidelines for hours as Mr. Romney's supporters raised \$6.5 million.

Id.

1 In a video posted on the campaign's website, RFP national finance director Spencer Zwick,
2 shown speaking the evening before the calling event, stated:

3 Well, we've got a great group of supporters from around the
4 country. . . .we have close to a thousand people that have
5 traveled at their own expense coming to Boston with the idea
6 that they are going to raise money to help us push toward the
7 end of the quarter. So tonight [a Fenway Park barbecue on
8 July 24] is a thank you for their support, but by and large we
9 are here to raise money. So starting tomorrow, we'll go to the Boston
10 Garden and they will call their personal rolodex. They'll call their
11 friends. They'll call their family. They'll call people
12 that maybe contributed a little bit but need to contribute some more.
13 So our goal is to raise money and expand our base of support.

14
15 Available at <http://mittromney.permissiontv.com/index.html>.

16
17 The available information indicates that Utah resident Kem Gardner, at the invitation of
18 RFP, traveled to Boston to raise funds for RFP and to attend a Fenway Park dinner, and chartered a
19 plane at his own expense for his travel to and from Boston. He also apparently invited a large group
20 of friends and families who were planning to attend the events to accompany him on the plane.²
21 RFP's response does not address the alleged \$150,000 cost of the plane, which was based on a press
22 article attached to the complaint. See Thomas Burr, *Did Utahn violate contribution laws by paying*
23 *for Romney volunteers' flight to Boston?*, The Salt Lake Tribune, June 29, 2007 (reporting that
24 Gardner told The Salt Lake Tribune that he paid \$150,000 to charter a Jet Blue plane to fly Utahns

² Kem Gardner is the founder of the Gardner Company, a commercial and real estate development firm. Known for being active in Utah affairs, Gardner was instrumental in persuading Romney to serve as the CEO of the organizing committee for the 2002 Winter Olympic Games, which at the time were embroiled in numerous financial scandals. See David Lightman, *Candidate known as turnaround artist*, Islandpacket.com (January 12, 2008) available at <http://www.islandpacket.com/news/local/story/128897.html>. Romney's subsequent actions as CEO have been credited with "rescuing" these Olympic Games. See Kirk Johnson, *The Long Run: In Olympics Success, Romney Found New Edge*, The New York Times, September 19, 2007. In a July 31, 2007 RFP press release, Romney named Gardner one of the RFP's National Finance Co-Chairs for the State of Utah.

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1 to Boston).³ At the time of the event, Gardner had already contributed \$2,300 to RFP, the
2 maximum for the primary; he never made a monetary contribution to Romney for the general
3 election.

4 **B. Analysis**

5 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no
6 person shall make contributions to any candidate and his authorized political committee with respect
7 to any election for Federal office that, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1). The
8 Act also provides that no candidate or political committee shall knowingly accept any contribution
9 in violation of the prescribed limits, 2 U.S.C. § 441a(f), and that political committees must report all
10 contributions. 2 U.S.C. § 434(b). The Act defines the term "contribution" as (1) "any gift,
11 subscription, loan, advance, or deposit of money or anything of value made by any person for the
12 purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R.
13 § 100.52. ("anything of value" includes all in-kind contributions).

14 The Act exempts from the definition of contribution "the value of services provided without
15 compensation by any individual who volunteers on behalf of a candidate or political committee,"
16 2 U.S.C. § 431(8)(B)(i), 11 C.F.R. § 100.74 (the "volunteer exception"), as well as, in pertinent part,
17 any unreimbursed payment for travel expenses made by any individual on behalf of a candidate to
18 the extent that the cumulative value of such activity by such individual does not exceed \$1,000 with
19 respect to any one election. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

20

³ RFP's Response also does not address how many people he transported. On his website, blogger Eli Eyre, who attended the "America's Calling" event, apparently traveling on Gardner's plane, states "Kem Gardner chartered the whole flight. and between the 150 people on the plane, about \$700,000 was raised. Not bad." <http://elijahscsevre.blogspot.com>. The press account attached to the complaint account also reports that 150 people were onboard the chartered flight.

1 In Advisory Opinion (“AO”) 2007-8, the Commission stated that the volunteer exception “is
2 restricted to donations of the volunteer’s own time and services and does not generally exempt
3 actual costs incurred on behalf of a Federal candidate or political party.” As an illustration of that
4 restriction, the Commission advised that if the AO requester traveled across the country at the
5 request of a Federal candidate to arrange for an entertainer to perform at the candidate’s campaign
6 event, then the unreimbursed payment for that travel would be a contribution to that candidate’s
7 committee to the extent that it exceeded \$1,000. *Id.*

8 In its Response, RFP appears to suggest that if attendees travel to an event that is nominally
9 a “fundraiser”—that is, an event at which funds are raised—the travel expenses are not subject to
10 the restrictions on the volunteer exception. According to the RFP, the complaint apparently
11 contends that outside the volunteer exception, “federal committees must pay for the travel of *all*
12 fundraising event attendees *for every* type of fundraising event.” RFP Response at 1 (emphasis in
13 original). But the complaint does not say this and it is not the case.

14 There is a distinction between typical fundraising events at which attendees eat lunch or
15 dinner, dance, play golf, view performances, and/or listen to speakers, and other such events where
16 the attendees provide uncompensated services to the campaign. As to the former, where individuals
17 do not provide services on behalf of the candidate, but merely make or deliver contributions, their
18 travel costs over \$1,000 are not in-kind contributions. See MUR 5020 (Trump Hotels and Casinos
19 *et al.*) (a supporter’s payment of his plane ticket and a friend’s plane ticket to a candidate’s
20 fundraiser was not an in-kind contribution, given that neither did any work on behalf of the
21 candidate at the fundraiser). On the other hand, where the event involves volunteers, at the
22 invitation of the campaign, expending their time and services on behalf of the candidate, the Act and

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1 the regulations provide that their unreimbursed travel expenses exceeding \$1,000 are contributions.

2 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

3 Kem Gardner and his fellow attendees, at the invitation of RFP, participated as volunteer
4 fundraisers for Mitt Romney in the "America's Calling" event. A January 9, 2008 press release, in
5 which RFP announced the results of another volunteer phone-a-thon in Boston on that date, states
6 that "[t]oday marks the first Romney for President finance event in which general election dollars
7 were raised." Since the June 25, 2007 event was therefore geared to raising funds for the primary,
8 for which Gardner had already "maxed-out," it appears that Gardner's participation in that event
9 was solely devoted to raising money from others on Romney's behalf. That would have been true
10 for the other participants who had already made the maximum contribution to Romney for the
11 primary by June 25, 2007.

12 RFP attempts to downplay the use of the volunteer services by describing the event as one
13 "where donors were invited to bring check contributions, solicit friends and personal contacts, and
14 socialize with other donors...a large fundraiser where *donors*—some 'maxed out,' and some not—
15 also solicited contributions." RFP Response at 2. (Emphasis in the original). But RFP's own press
16 releases and website videos show otherwise, as they reveal a meticulously staged phone-a-thon that
17 reflected a massive volunteer effort.

18 Far from the volunteer activity being incidental to the fundraising event, it was, in fact, the
19 event itself. In effect, "America's Calling" constituted a human telephone bank staffed by Romney
20 supporters, which, over the course of several hours, made thousands of similar phone calls touting
21 Mitt Romney and soliciting contributions. *Cf.* 11 C.F.R. §§ 100.26-28. Accordingly, the
22 participants' donations of their time and service, and their unreimbursed travel expenses not in

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1 excess of \$1,000, were not contributions. However, as an unreimbursed travel expense exceeding
2 \$1,000, the reported \$150,000 cost Gardner incurred in chartering a plane to travel to and from the
3 event, constituted an excessive in-kind contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R.
4 § 100.79.

5 Therefore, since RFP has long known that Gardner paid in excess of \$1,000 in travel
6 expenses on behalf of the candidate and did not reimburse him, there is reason to believe that
7 Romney for President, Inc. and Darrell Crate, in his official capacity as treasurer violated 2 U.S.C.
8 § 441a(f) by knowingly accepting an excessive in-kind contribution.⁴ Additionally, because RFP
9 did not report Gardner's in-kind contribution, there is reason to believe that Romney for President,
10 Inc. and Darrell Crate, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

⁴ The complaint references the aforementioned January 2007 calling event, *supra* footnote 1, and suggests that the Commission should also investigate whether there were excessive in-kind contributions for travel in connection with that event. Complaint at 1. The complaint contains no specific allegations concerning the January 2007 event, and there is no available information suggesting that any volunteers (or others) chartered a plane or otherwise incurred considerable travel expenses to participate in that event.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Kem Gardner

MUR 5937

5
6
7 **I. INTRODUCTION**

8
9 The complaint in this matter alleges that Kem Gardner made, and Romney for President, Inc.
10 and Darrell Crate, in his official capacity as treasurer ("RFP") accepted, an excessive in-kind
11 contribution when Gardner paid \$150,000 to charter an airline plane to fly himself and a large
12 number of other persons from Utah to Boston to work as volunteers at an RFP fundraising event.
13 Complaint at 1. In response, Gardner contends that travel expenses incurred to attend fundraisers
14 are not contributions. As discussed in more detail below, however, Gardner and the attendees
15 accompanying him on his chartered flight were volunteers providing services on behalf of the
16 candidate, and any unreimbursed volunteer travel payment exceeding \$1,000 constitutes a
17 contribution. See 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79. Accordingly, given that the
18 volunteers onboard the chartered flight did not reimburse Gardner for any travel expenses, his
19 reported payment of \$150,000 for the flight constitutes an in-kind contribution exceeding the
20 maximum allowable limit pursuant to 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.79. Thus, Kem
21 Gardner made, and RFP received, an excessive in-kind contribution. Therefore, the Commission
22 has found reason to believe that Kem Gardner violated 2 U.S.C. § 441a(a).

23 **II. FACTUAL AND LEGAL ANALYSIS**

24 **A. Facts**

25 The event in issue, which RFP dubbed "America's Calling," took place on June 25, 2007.
26
27 RFP's June 25, 2007 press release following the event states "Mitt Romney, family, friends and

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1 supporters gathered at the TD Banknorth Garden to reach across the country and raise the resources
2 necessary for a national campaign” and notes that the participants made more than 20,000 telephone
3 calls. The press release also states that the calling arena, which was more than 17,000 square feet,
4 housed more than 600 volunteer fundraisers who used 400 landline phones. The calling event raised
5 approximately \$2 million. RFP Response at 2. The press was invited to cover the event and it
6 received extensive press coverage.¹ *See, e.g., Romney raises campaign cash at Boston sports*
7 *venues*, June 25, 2007; Michael Luo, *Romney Campaign Reaches Back Into His Deep Pockets*, New
8 York Times, June 26, 2007.

9 In a video posted on the campaign’s website, RFP national finance director Spencer Zwick,
10 shown speaking the evening before the calling event, stated:

11

¹ The June 25, 2007 event followed an extremely successful similar event sponsored by the Romney campaign in January 2007, called “National Calling Day.” According to a press account concerning the earlier event, Spencer Zwick, RFP’s fundraising director, reportedly wanted Romney, a multimillionaire, to avoid the fates of other wealthy candidates, like Steve Forbes and Ross Perot, who provided considerable self-financing. Zwick is quoted as saying, “By Mitt or anyone else self-funding, you don’t have a lot of people making investments in you.... To be credible, you have to show that you have raised resources from around the country.” *See* David D. Kirkpatrick, *Romney Used His Wealth to Enlist Richest Donors*, *The New York Times*, April 6, 2007. Thus, according to the article,

[i]nstead of tapping his own money directly, Mr. Romney embarked on an effort to leverage his personal fortune into donations to his Republican primary campaign.... At the start of the first quarter of this year, for example, Mr. Romney lent his campaign \$2.35 million to pay for an elaborate demonstration of just how fast he could raise money from others. He rented the Boston convention center, furnished it with more than 400 laptop computers, loaded each with custom software and had more than 400 telephone lines installed. He invited 400 wealthy supporters, including dozens of chief executives he knew through business connections, to a reception at an adjacent hotel. The next day each sat down before a personal-contact list loaded into an assigned laptop, with dozens of technical support staff and campaign finance advisers standing by to assist. Reporters watched from the sidelines for hours as Mr. Romney’s supporters raised \$6.5 million.

Id.

1 Well, we've got a great group of supporters from around the
2 country. . . we have close to a thousand people that have
3 traveled at their own expense coming to Boston with the idea
4 that they are going to raise money to help us push toward the
5 end of the quarter. So tonight [a Fenway Park barbecue on
6 July 24] is a thank you for their support, but by and large we
7 are here to raise money. So starting tomorrow, we'll go to the Boston
8 Garden and they will call their personal rolodex. They'll call their
9 friends. They'll call their family. They'll call people
10 that maybe contributed a little bit but need to contribute some more.
11 So our goal is to raise money and expand our base of support.

12
13 Available at <http://mittromney.permissiontv.com/index.html>.

14
15 Kem Gardner, a resident of Utah, states in his response to the complaint that at the invitation
16 of RFP, he traveled to Boston to raise funds for RFP and to attend a Fenway Park dinner, and
17 chartered a plane at his own expense for his travel to and from Boston. He also states that he invited
18 a large group of friends and families who were planning to attend the events to accompany him on
19 the plane.² Gardner Response at 1-2. His response does not address the alleged \$150,000 cost of
20 the plane, which was based on a press article attached to the complaint. See Thomas Burr, *Did*
21 *Utahn violate contribution laws by paying for Romney volunteers' flight to Boston?*, The Salt Lake
22 Tribune, June 29, 2007 (reporting that Gardner told The Salt Lake Tribune that he paid \$150,000 to
23 charter a Jet Blue plane to fly Utahns to Boston).³ At the time of the event, Gardner had already

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³ Gardner's Response also does not address how many people he transported. On his website, blogger Eli Eyre, who attended the "America's Calling" event, apparently traveling on Gardner's plane, states "Kem Gardner chartered the whole flight, and between the 150 people on the plane, about \$700,000 was raised. Not bad." <http://elijahscseyre.blogspot.com>. The press account attached to the complaint account also reports that 150 people were onboard the chartered flight.

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1 contributed \$2,300 to RFP, the maximum for the primary; he never made a monetary contribution to
2 Romney for the general election.

3 **B. Analysis**

4 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no
5 person shall make contributions to any candidate and his authorized political committee with respect
6 to any election for Federal office that, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1). The
7 Act also provides that no candidate or political committee shall knowingly accept any contribution
8 in violation of the prescribed limits, 2 U.S.C. § 441a(f), and that political committees must report all
9 contributions. 2 U.S.C. § 434(b). The Act defines the term "contribution" as (1) "any gift,
10 subscription, loan, advance, or deposit of money or anything of value made by any person for the
11 purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R.
12 § 100.52. ("anything of value" includes all in-kind contributions).

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14 compensation by any individual who volunteers on behalf of a candidate or political committee,"
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16 any unreimbursed payment for travel expenses made by any individual on behalf of a candidate to
17 the extent that the cumulative value of such activity by such individual does not exceed \$1,000 with
18 respect to any one election. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

19 In Advisory Opinion ("AO") 2007-8, the Commission stated that the volunteer exception "is
20 restricted to donations of the volunteer's own time and services and does not generally exempt
21 actual costs incurred on behalf of a Federal candidate or political party." As an illustration of that
22 restriction, the Commission advised that if the AO requester traveled across the country at the

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1 request of a Federal candidate to arrange for an entertainer to perform at the candidate's campaign
2 event, then the unreimbursed payment for that travel would be a contribution to that candidate's
3 committee to the extent that it exceeded \$1,000. *Id.*

4 Gardner's response to the complaint appears to suggest that if attendees travel to an event
5 that is nominally a "fundraiser"—that is, an event at which funds are raised—the travel expenses are
6 not subject to the restrictions on the volunteer exception. There is a distinction between typical
7 fundraising events at which attendees eat lunch or dinner, dance, play golf, view performances,
8 and/or listen to speakers, and other such events where the attendees provide uncompensated services
9 to the campaign. As to the former, where individuals do not provide services on behalf of the
10 candidate, but merely make or deliver contributions, their travel costs over \$1,000 are not in-kind
11 contributions. *See* MUR 5020 (Trump Hotels and Casinos *et al.*) (a supporter's payment of his
12 plane ticket and a friend's plane ticket to a candidate's fundraiser was not an in-kind contribution,
13 given that neither did any work on behalf of the candidate at the fundraiser). On the other hand,
14 where the event involves volunteers, at the invitation of the campaign, expending their time and
15 services on behalf of the candidate, the Act and the regulations provide that their unreimbursed
16 travel expenses exceeding \$1,000 are contributions. 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

17 Kem Gardner and his fellow attendees, at the invitation of RFP, participated as volunteer
18 fundraisers for Mitt Romney in the "America's Calling" event. A January 9, 2008 press release, in
19 which RFP announced the results of another volunteer phone-a-thon in Boston on that date, states
20 that "[t]oday marks the first Romney for President finance event in which general election dollars
21 were raised." Since the June 25, 2007 event was therefore geared to raising funds for the primary,
22 for which Gardner had already "maxed-out," it appears that Gardner's participation in that event

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1 was solely devoted to raising money from others on Romney's behalf. That would have been true
2 for the other participants who had already made the maximum contribution to Romney for the
3 primary by June 25, 2007. Accordingly, the participants' donations of their time and service, and
4 their unreimbursed travel expenses not in excess of \$1,000, were not contributions. However, as an
5 unreimbursed travel expense exceeding \$1,000, the reported \$150,000 cost Gardner incurred in
6 chartering a plane to travel to and from the event, constituted an excessive in-kind contribution. See
7 2 U.S.C. § 431(8)(B)(iv), 11 C.F.R. § 100.79.

8 Therefore, there is reason to believe Kem Gardner violated 2 U.S.C. § 441 a(a) by making an
9 excessive in-kind contribution to Romney for President, Inc. consisting of unreimbursed travel
10 expenses exceeding \$1,000 paid on behalf of the candidate.⁴

⁴ The complaint references the aforementioned January 2007 calling event, *supra* footnote 1, and suggests that the Commission should also investigate whether there were excessive in-kind contributions for travel in connection with that event. Complaint at 1. The complaint contains no specific allegations concerning the January 2007 event, and there is no available information suggesting that Kem Gardner chartered a plane or otherwise incurred considerable travel expenses to participate in that event.

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